UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1996/SR.23
21 May 1996

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

Fifty-second session

SUMMARY RECORD OF THE 23rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 2 April 1996, at 4 p.m.

Chairman:	Mr. MBA ALLO	(Gabon)
later:	Mr. VERGNE SABOIA	(Brazil)

CONTENTS

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-SEVENTH SESSION (continued)

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.96-12434 (E)

CONTENTS (continued)

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The meeting was called to order at 4 p.m.

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-SEVENTH SESSION (agenda item 15) (continued) (E/CN.4/1996/2-E/CN.4/Sub.2/1995/51, E/CN.4/1996/79, 80 and Add.1 and 2, 81, 82, 85, 86 and 134; E/CN.4/1996/NGO/5, 13, 23 and 65; A/50/369; E/CN.4/Sub.2/1995/22 and 28/Add.1)

1. Mr. NARVAEZ GARCIA (American Association of Jurists) expressed his organization's concern at the Sub-Commission's working methods since, in his opinion, some of its studies were simply a reiteration of previous studies on the same subject or related to questions that did not fall within its terms of reference and therefore duplicated the activities of specialized agencies. In that regard, he mentioned the question of female sexual mutilations and other traditional practices affecting the health of women, which had been considered by a working group established by the Commission on Human Rights in 1984 and was regularly discussed by WHO, which was engaged in field action in cooperation with national bodies and sometimes with UNICEF and UNDP. Other questions were of a nature that did not necessitate the appointment of a special rapporteur; that was the case, in particular, with the periodic reports on the States that had proclaimed, extended or lifted a state of emergency. Related activities, such as seminars and international meetings, should be justified only by the novelty or complexity of the subject under consideration and the diversity of the approaches thereto. It would be appropriate for the Sub-Commission to submit to the Commission on Human Rights, pursuant to Commission resolution 8 (XXIII), an annual report containing information on violations of human rights and fundamental freedoms from all the available sources and to bring to the Commission's attention any situation that seemed to reveal a consistent pattern of violations of those rights and freedoms in any country.

2. Moreover, the excessive recourse to the confidential consideration procedure and to a vote by secret ballot could detract from the credibility and moral authority of the Sub-Commission, whose work should be conducted in the most transparent manner possible. A vote by secret ballot did not, as had been alleged, strengthen the independence of the experts, since they either were or were not independent. Their competence in the various fields relating to human rights should also be recognized and well documented. The purpose of those comments by the American Association of Jurists was merely to help to increase the effectiveness of the Sub-Commission, which it regarded as an irreplaceable and indispensable body for the defence and promotion of human rights.

3. In conclusion, he requested the Commission to consider the human rights situation in Colombia, which formed the subject of Sub-Commission resolution 1995/6, and to take the necessary measures to put an end to the violations that were being committed in that country.

4. Mrs. MARWAH (Indian Council of Education) said that it was situations revealing a consistent pattern of violations of human rights, including policies of discrimination, segregation and apartheid, with particular reference to colonial and dependent countries, which should be brought to the attention of the Commission. It might be wondered how much time was needed to

decide whether the human rights violations committed in a country constituted a consistent pattern and whether greater attention should be paid to the question when those violations took place in non-colonial or non-dependent countries. In any civilized society, it was the responsibility of the State to promote and protect the human rights of all individuals, including the members of vulnerable ethnic, linguistic or religious minorities. The International Bill of Human Rights clearly showed that the United Nations could not remain indifferent to the fate of minorities. However, many countries which proclaimed their commitment to the principles set forth in the Bill were continuing to ruthlessly deny the basic rights of the minorities living in their territory.

5. Fortunately, there were others, such as India, which had wisely enshrined the fundamental principle of secularism in their Constitution and taken measures to ensure that all religions were treated on an equal footing, since they knew that, otherwise, no multi-ethnic and multireligious society could survive. The emergence, in recent years, of a number of conflicts stemming from religious or ethnic problems was threatening the societies which had made an effort to institutionalize equal treatment, regardless of race, colour, sex or belief. The most alarming thing was that some States agreed to the redrawing of national borders on the basis of religious considerations. It was evident that minorities would never be able to occupy their rightful place in society unless a way was found to prevent some States from applying an official policy of discrimination against specific groups of their population on the basis of sex, religion or ethnic origin.

6. Mr. HARDBATTLE (Four Directions Council) drew the Commission's attention to the fate of the Khwe people of Botswana, whom the Botswana Government refused to recognize not only as a people but as a minority entitled to protection under the International Convention on the Elimination of All Forms of Racial Discrimination, which Botswana had nevertheless ratified. Contrary to the Government's affirmation in the latest periodic report it had submitted to the Committee on the Elimination of Racial Discrimination, since the 1970s the Khwe people had systematically been driven from their traditional ancestral territories; the last traditional Khwe community was currently being forcibly removed from the Central Kalahari Game Reserve under the pretext of protecting wildlife. It therefore seemed more important to the Government to protect animals than human beings.

7. Consequently, the Four Directions Council urged the Commission to intervene to halt the forcible removal of the Khwes from the Kalahari Reserve and ensure that their basic rights were respected, particularly the right to use their language, the right to no longer be confined in territories controlled by the Government and the right to no longer be exploited, tortured and murdered. In that connection, he referred to the case of a Khwe who had died as a result of torture inflicted on him by the game wardens, who had accused him of poaching. None of his torturers had been prosecuted.

8. The time had come for the Commission to no longer accept without question the lies of the Botswana Government and, if necessary, to send observers to Botswana to stop the forcible expulsion of the Khwes from the

Kalahari Reserve. The Commission had an obligation not only to protect the rights of the Khwes as a minority but also to ensure their survival as a people.

9. Mr. ALI (Afro-Asian Peoples Solidarity Organization) said that the present-day world was witnessing a proliferation of inter-ethnic conflicts which arose from a lack of tolerance among different groups and were being aggravated by the policy applied by some Governments. In fact, some States, while professing democratic ideals, had institutionalized and legalized discrimination between religions and had relegated the members of minority groups to the status of second-class citizens on grounds of their gender, their religious beliefs or their social class. For example, in Pakistan, which had been created for Muslims but in which freedom of religion had been guaranteed for all religious minorities, not only the Christians but also the Shi'ites, the Zikris and the Ahmadis were being persecuted and oppressed. Given the fact that intolerance spread rapidly, it was essential that the defenders of democracy should appeal to Pakistan to remedy that situation before other countries were afflicted.

10. The repressive measures against those minorities had been highlighted in the latest report of the Human Rights Commission of Pakistan, which had often deplored the country's lack of a democratic culture and, like some international NGOs such as Jubilee Watch and Human Rights Watch/Asia, had attempted to show international public opinion how the constitutional and legal structure of Pakistan in effect promoted discrimination against religious minorities and women.

11. In order to safeguard the rights of all human beings, it was essential to strengthen democratic structures, particularly in newly-independent countries. There was also a need to counter the newly-emerging trends which might lead to the creation of insular societies suspicious of those that did not subscribe to their rigid beliefs. The Commission could certainly play a decisive preventive role in that field.

12. Mr. SAFI (Muslim World League) referring, among other important questions considered by the Sub-Commission at its forty-seventh session, to the impunity of perpetrators of violations of human rights, said that the question of the massive violations perpetrated by the Indian security forces in Kashmir had been raised on several occasions under various agenda items.

13. Mr. Jalil Andrabi, Chairman of the Kashmir Commission of Jurists, who had been one of the League's most active members and had given the Sub-Commission an eloquent description of the plight of the Kashmiris under the Indian yoke, had been assassinated for defending the rights of the Kashmiris. Mr. Andrabi had played an active role in denouncing the abuses committed by the Indian security forces, with full impunity and with the acquiesence of the Indian authorities, which had used arbitrary arrests and detentions, torture, extrajudicial executions and the murder of civilians and peaceful demonstrators as a weapon of war against the Kashmiris to force them to abandon their struggle for self-determination. Hence, he had had to be silenced.

14. The Muslim World League recommended that the Commission should endorse the decision of the Sub-Commission to appoint a special rapporteur to prepare a report on the recognition as an international crime of gross and large-scale violations of human rights perpetrated on the orders of Governments or sanctioned by them, and proposed that the Special Rapporteur should begin by studying the situation in the disputed territory of Jammu and Kashmir.

15. Mr. SHAWL (World Society of Victimology) emphasized the importance of everyone's right to freedom of movement and freedom of residence within a State, as well as the right to leave any country, including one's own, and to return to one's country. Those rights, which were recognized in various international human rights instruments, had been reaffirmed in Sub-Commission resolution 1995/13. The principles set forth in that resolution were applicable to all countries, including those to which the Commission was paying particular attention. However, in many regions, and particularly Kashmir, the right to freedom of movement was being denied to many citizens, and especially to defenders of human rights. Many Kashmiris had sacrificed their lives in the campaign waged to exercise that right and denounce the measures impeding its exercise by testifying before the Commission and the Sub-Commission. One of his own friends, Jalil Andrabi, Chairman of the Kashmir Commission of Jurists, had been assassinated after being abducted and tortured by the Indian security forces for defending the right of the Kashmiris to self-determination. His body had been found, with the hands tied, near the centre where he had been detained. Since then, 24 other Kashmiris, including another political activist, had been gunned down by the Indian forces.

16. The report of the Sub-Commission should take note of those gross violations of human rights and its adoption should not be a simple formality. The Commission bore a responsibility to defend and protect all those who were striving to promote human rights anywhere in the world.

17. Ms. SHAUMIAN (International Institute for Peace) said it was essential, particularly for multinational States, to find ways to settle ethnic problems and tensions that would simultaneously guarantee the territorial integrity of the country concerned and respect for the human rights of its population. In fact, in recent years, with the development of nationalism, the question of territorial integrity had become an acute political problem. Moreover, ethnic sovereignty and territorial integrity were viewed as virtually irreconcilable concepts, particularly since determination of physical and territorial integrity was assumed to be a monopoly of the majority, of those holding power and seeking to impose their will on the minorities, thus giving rise to bloody conflicts.

18. However, it was important not to forget the role played in that regard by political parties and groups which had come to power with the advent of nationalism and which had been able to exploit latent ethnic tensions, as well as by criminal groups which often had links with official circles and derived vast profits from instability, military operations and arms sales. In Bosnia, Chechnya and other regions where ethnic conflicts were raging, armed groups, often with members from other communities and other countries, were resorting to terrorism to impose their will on the local populations and destroy their culture and resources in the name of causes and ideologies that dated back to

the Dark Ages. It was indispensable, therefore, to settle the essentially political problem of reconciling the right to ethnic sovereignty and the right to territorial integrity in such a way as to safeguard fundamental human rights and ensure respect for the interests of all the parties concerned through dialogue and negotiation.

19. Mrs. de CASTRO-MULLER (Observer for the Philippines) focused on the draft programme of action on the traffic in persons and the exploitation of the prostitution of others and the question of traffic in women and girls and called for urgent action to be taken at the national, regional and international levels to put an end to the exploitation, and particularly the sexual exploitation, of women, which had become a veritable industry on an international scale. The problem had been recognized at the international conferences held in recent years at Vienna, Cairo, Copenhagen and Beijing and had been condemned at the forty-ninth session of the General Assembly, which had associated the traffic in persons with other illegal activities such as forced labour, false marriages, clandestine ployment and false adoption.

20. In his report on that question (A/50/369), the Secretary-General acknowledged that the analysis of the way in which those issues had been approached in recent international declarations and programmes of action, or under existing international instruments, showed that there was still some ambiguity about the methods to be applied to solve the problem. To that end, all countries should promptly accede to the relevant international instruments, such as the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, to which only 69 States were parties. Various recommendations had been made by, for example, the Commission on Crime Prevention and Criminal Justice, which had advocated the adoption of criminal justice measures to combat the organized smuggling of illegal foreign migrants, and by the Special Rapporteurs on violence against women and the sale of children. A seminar on that question had also been organized in 1994 by the International Organization for Migration.

21. In his report, the Secretary-General also referred to the activities that had been undertaken outside the United Nations system, such as the seminars and conferences organized by the Council of Europe, various non-governmental organizations and the Government of the Netherlands. For its part, the Government of the Philippines had drawn up a bilateral programme to combat that phenomenon in the Philippines, in collaboration with Belgium and some non-governmental organizations.

22. Although initiatives were obviously not lacking, the problem was not being approached comprehensively. For that reason, her delegation endorsed the Secretary-General's recommendation concerning the preparation of a comprehensive report on measures to be taken to solve the problem of international trafficking. Her delegation urged the Commission to approve the draft programme of action on that question which had been prepared by the Sub-Commission's Working Group on Contemporary Forms of Slavery and which would form an excellent basis for positive action in that field.

23. Mr. Vergne Saboia (Brazil) took the Chair.

24. Mr. SHAMSHUR (Ukraine) said it was gratifying that the Sub-Commission had often initiated discussions which had led to the drafting of international instruments. That had been the case with the draft United Nations Declaration on the Rights of Indigenous Peoples, which was currently being considered by one of the Commission's working groups. He also welcomed the Sub-Commission's decision (resolution 1994/26) to transmit the text of the Declaration on Minimum Humanitarian Standards to the Commission, which should give due attention to that problem and consider the eventual elaboration of a new international legal norm in that regard. The Sub-Commission and the Commission should also consider ways to follow up the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, which had been adopted by the General Assembly in 1991. His country was also very interested in the results of the first session of the Working Group on Minorities, particularly its decision to formulate a definition of the term "minority", and intended to play an active role in the work of that body, which should nevertheless define its priorities even more precisely.

25. In spite of those positive trends, however, it nevertheless seemed essential for the Sub-Commission to review its modus operandi if it wished to make optimum use of its capacities and maintain its prestige. The proposals concerning the Sub-Commission and its relationship with the Commission which had been made by the open-ended informal working group established under the terms of the Commission's decision 1994/111 were still valid. The Sub-Commission should accord priority to the formulation of acceptable recommendations based on in-depth studies of particular situations and general human rights problems instead of spending time adopting politically-motivated resolutions by secret ballot. It was also regrettable that some important studies undertaken by the Sub-Commission's experts had not been widely disseminated. At all events, the Sub-Commission's work should be rationalized within the context of an overall improvement of the human rights mechanisms.

26. Mr. MACDARROW (Australia) highlighted the action taken by the Australian Government to defend the rights of disabled persons. In 1992, the Government had enacted the Disability Discrimination Act, under which any form of discrimination based on disability became unlawful and which was one of the very first examples anywhere in the world of legislation designed to combat discrimination on grounds of disability in a comprehensive manner.

27. At the international level, in the continuing absence of an international convention on disability, Australia believed that the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, which had been adopted by the General Assembly in 1993, constituted the most significant text in that regard. Australia was proud to have played a role in the drafting of those Rules and welcomed the decision that had been taken to appoint, within the framework of the Commission for Social Development, a Special Rapporteur to monitor their application. Australia had replied to the first questionnaire prepared by the Special Rapporteur and was currently drafting its reply to the second. The Australian authorities were doing everything possible to stimulate wider public awareness of the Rules and also of the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care. They were stressing the fact that disability should be regarded as a forbidden reason for discrimination, as in

the case of AIDS, for example. They welcomed the fact that explicit reference to the disabled had been made in the Convention on the Rights of the Child (arts. 2.1 and 23) and had noted, with great satisfaction, the work on disabled persons of the Committee on Economic, Social and Cultural Rights.

28. In accordance with the Vienna Declaration, all the rights of disabled persons should be recognized as universal and interdependent and should be safeguarded by all possible means through regional and international cooperation.

29. Mr. LIU Xinsheng (China) pointed out that, in international relations, the strong were still bullying the weak and new forms of racism, such as xenophobia and discrimination against migrant workers, were rampant in certain countries. United Nations human rights bodies, including the Sub-Commission, should give priority attention to those problems. Realization of the right to decent living conditions, as well as the right to development, had become a rigorous test for bodies defending human rights. The Sub-Commission had conducted serious studies on the right to housing, human rights and extreme poverty and issues of common concern such as the protection of indigenous populations; in that regard, the Working Group on Indigenous Populations, chaired by Mrs. Daes, had made a valuable contribution to the drafting of the declaration on the rights of indigenous populations.

30. The Sub-Commission should remain committed to the principles of fairness and objectivity and should put an end to the unfounded accusations that were being made against Asian, African and Latin American countries. It was regrettable that some NGOs were refusing to comply with the principles of the Charter, the provisions of Economic and Social Council resolution 1296 (XLIV) and the schedule of the Sub-Commission, thereby disrupting the latter's work.

31. The Sub-Commission, being by nature different from the Commission, should confine itself, in accordance with its mandate, to studying questions of a universal nature in the field of human rights, with a view to providing the Commission with advisory opinions; it should not involve itself in matters not directly related to human rights and should not invest most of its energy on country-specific situations. The Commission should consider ways to divide the tasks between the two bodies in a rational and coherent manner.

32. Mr. Chang il PARK (Republic of Korea) said that, in the face of the gross and systematic violations of human rights that had characterized recent years, there was a need for more vigorous and fresh approaches to the promotion of human rights. The Sub-Commission had shown concern for the particularly critical problems that were being encountered in the modern-day world. For example, since recent events had demonstrated the vulnerability of women to sexual violence in times of armed conflict, the Sub-Commission had presented a draft decision on systematic rape and sexual slavery in periods of armed conflict. His country supported that draft decision, which had been recommended for adoption in Sub-Commission resolution 1995/14, and welcomed the fact that the Sub-Commission had decided to appoint Mrs. Linda Chavez as Special Rapporteur on the question.

33. The Republic of Korea was in favour of an in-depth study of the question of the impunity of perpetrators of crimes such as political genocide and

ethnic cleansing, to which the Sub-Commission had given close attention. Moreover, being convinced of the need to develop a mechanism to deal with human rights violations committed by the State, his country believed that Sub-Commission resolution 1995/22 deserved to be taken into consideration.

34. Finally, the Sub-Commission should make full use of the contributions of NGOs without prejudicing its own effectiveness. Even if some of its working methods needed to be reviewed, it should be able to continue its efforts to promote and protect human rights.

35. Mr. SINGH (India) supported the guidelines contained in Commission resolution 1995/26 and expressed his belief that the Sub-Commission's most useful activity consisted in the preparation of studies and recommendations. The Sub-Commission's task was to study alleged violations of human rights, to present its conclusions to the Committee and to monitor new developments in the field of human rights, bearing in mind the priorities outlined in the Vienna Declaration and Programme of Action.

36. His delegation was concerned that the Sub-Commission was devoting less effort to the preparation of studies and recommendations based on in-depth research and its activities tended to reflect those of the Commission. At its forty-seventh session, it had not complied with its mandate: the Sub-Commission's expert had not been able to complete his study on human rights and terrorism and the Sub-Commission had not discussed that issue fully due to "lack of time". In general, the Sub-Commission was not taking sufficient account of current realities and of the principles set forth in the Vienna Declaration and Programme of Action. With regard to its primary function of preparing impartial studies and recommendations, it had as many as 26 mechanisms (rapporteurs, working groups and experts), and finally, the Sub-Commission's fields of intervention had proliferated with little accountability to the Commission and it did not hesitate to interpret its mandate broadly and even to alter that mandate.

37. The Sub-Commission should thoroughly modify its working methods in order to play once again a dynamic role in the defence of human rights. His delegation was willing to enter into consultations with all interested delegations with a view to presenting to the Commission a resolution that could be adopted by consensus. It already had some proposals aimed at improving the Sub-Commission's work.

38. The Sub-Commission should refrain from duplicating the debates of the Commission and of the Third Committee of the General Assembly; it should revert to its original role as a think-tank; it should present the results of its examination of human rights violations to the Commission instead of adopting a large number of resolutions; it should avoid any politicization of its work and, instead of passing judgement, should seek dialogue and consensus; it should come to terms with the new realities resulting from the Vienna Conference, particularly the indivisibility and interdependence of human rights, and approach those rights from a global perspective; it should be more rapid and effective in carrying out its studies and the Commission should not approve further studies until those under way had been completed. In view of the financial difficulties, the Commission should make every endeavour to avoid duplication and, in particular, should consider the

possibility of either reducing the duration of the Sub-Commission's annual sessions to two weeks or, alternatively, making its sessions biennial.

39. Mr. LOUKIANTSEV (Russian Federation) emphasized the usefulness of the studies undertaken by the Sub-Commission and noted that its decisions carried weight largely due to the experience and independence of its experts. Its standard-setting activities were particularly valuable for purposes of the elaboration of new international norms. However, it was regrettable that some studies were being unduly prolonged while others, although topical and important, were deadlocked. For example, the study on the recognition of gross and large-scale violations of human rights as an international crime should give rise to a standard-setting activity.

40. The evolution of international relations inevitably had repercussions on the activity of the United Nations and its organs, including the Sub-Commission. In that connection, it should be noted that several members of the Sub-Commission had not been able to come to terms with the new situation and, as a result, the Sub-Commission's work was being politicized and the Sub-Commission itself was straying into fields that were not directly related to human rights and sometimes duplicated the work of the Commission. Inertia was impeding not only any reorganization of its activities but also the updating of its agenda. The Sub-Commission's activities and working methods should be reviewed within the framework of the mandate defined by the Commission. The Russian Federation felt that the time had come to help the Sub-Commission to play a role in the new international situation and to strengthen its authority as a body defending human rights; that would be in everyone's interest.

41. Mr. MENDOZA (El Salvador) said that, at its forty-seventh session, the Sub-Commission had adopted two important resolutions, one entitled "Injurious effects of anti-personnel land-mines" and the other "Prevention of incitement to hatred and genocide, particularly by the media", which he hoped the Commission would follow up in an appropriate manner. At the present session, the Commission also had before it the report of the Working Group on Contemporary Forms of Slavery and should take a favourable decision on the draft programme of action on the traffic in persons and the exploitation of the prostitution of others contained in the report.

42. At its previous session, the Commission had decided to continue its consideration of the question of human rights and disability under the agenda item concerning the report of the Sub-Commission and had recommended a follow-up on the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, which had been adopted by the General Assembly. On the question of disability, he suggested that the Commission should request the Sub-Commission, at its next session, to invite the Commission's Special Rapporteur on social development, who was responsible for monitoring the application of the Rules, to submit a report on his activities so that endeavours could be made to supplement the existing norms in that regard.

43. The Sub-Commission should continue its efforts to improve its working methods, thereby possibly helping to improve the functioning of the Commission. Recalling that elections were due for half the members of the Sub-Commission, he emphasized the importance of the independence of the

experts of which it was composed and hoped that, in future, it would be possible to put an end to the paradoxical situation in which experts formed part of governmental delegations.

44. Mr. QUAYES (Bangladesh) said that the Sub-Commission, being responsible for undertaking studies and making recommendations concerning the prevention of discrimination and for considering communications in accordance with the procedure set out in Economic and Social Council resolution 1503 (XLVIII), was unique in so far as it was a subsidiary organ of the Commission consisting of independent experts elected by the Member States. It functioned on the basis of guidance from the Commission, which, for its part, drew on the Sub-Commission's work. Bangladesh, which had always carefully monitored the Sub-Commission's work, to which it attached special importance, was of the opinion that some issues needed to be taken into account in order to improve the functioning of the Sub-Commission.

45. Firstly, the Sub-Commission should resist the temptation to become a parallel Commission by adopting an increasing number of resolutions which, instead of reflecting the results of research conducted by the experts, tended to further particular political interests. The Sub-Commission should depoliticize its work and refocus on standard-setting activities, in which it excelled, and on the confidential procedure for the consideration of communications, leaving the Commission to take the decisions on the situation in specific countries. For example, the unpleasant exchanges between experts, the repartee between an expert and a delegation and the pejorative public declarations that had been heard at the forty-seventh session should be avoided. The Sub-Commission should focus on its cardinal function, but could also engage in pioneering work by, for example, as suggested by Mr. Eide, exploring a new generation of human rights instruments aimed at non-State actors. Some subtle contemporary forms of human rights violations also merited scrutiny, as did the protection of economic and social rights. The Commission could request a working group to provide the Sub-Commission with guidelines for its future work.

46. The Commission might also examine the work of the subsidiary bodies of the Sub-Commission. An extension of the initial three-year mandate of the newly-established Working Group on Minorities would not be justifiable unless that working group carried out substantive work instead of merely confining itself to consideration of the situation of minorities in specific countries. Moreover, he wondered whether it would be advisable to retain the Working Group on Indigenous Populations, since it had completed the drafting of a declaration on the rights of indigenous peoples and consideration was being given to the establishment of a permanent forum for indigenous people. Bangladesh felt that the mandates of those two working groups could be combined in a single revised mandate covering non-dominant population groups.

47. Mr. JAVED (Pakistan) said that, in his report (E/CN.4/1996/81), Mr. Maxim, the Chairman of the Sub-Commission at its forty-seventh session, had given an account of the useful work of the Sub-Commission in some new fields such as, for example, human rights and the environment and the right to a fair trial. The draft declaration on the rights of indigenous peoples, like the Sub-Commission's work on apartheid, had been completed and three new studies were being considered.

48. The Sub-Commission should, above all, endeavour to maintain the objectivity and impartiality that was expected of independent experts. Moreover, the confidential procedure provided for in Economic and Social Council resolution 1503 (XLVIII) was too slow. The Commission had attempted to remedy that shortcoming by appointing special rapporteurs; however, it was important not to sacrifice impartiality in the interests of efficiency. That procedure should be made more widely known, particularly among disadvantaged and illiterate population groups. Finally, the procedure should be confined to situations that seemed to reveal the existence of a consistent pattern of gross violations of human rights, individual communications being excluded therefrom. Furthermore, there was a need to combat the excessive politicization of the procedure; it was not normal that the decisions taken at the United Nations on the subject of human rights violations should relate mostly to small countries and rarely to more powerful States, which escaped criticism or censure. To make the confidential procedure more effective and impartial, consideration might be given to expanding the Working Group on Communications.

49. Even if the efficiency of the Sub-Commission needed to be improved, it would be premature to think that that body's standard-setting mission was coming to an end. The Sub-Commission could continue to accomplish useful work by avoiding any politicization and any duplication of the Commission's work. Pakistan attached considerable importance to the studies that were being undertaken or envisaged by the Sub-Commission. In that regard, the Commission and the Sub-Commission should re-examine the question of human rights in situations of armed conflict, particularly in the case of struggles for self-determination. The Sub-Commission should be called upon to develop procedures to ensure respect for the humanitarian standards set forth in the Geneva Conventions and the Protocols.

50. Mr. WILLE (Observer for Norway), speaking on behalf of the Nordic countries, said that, in his address at the beginning of the session, the Secretary-General of the United Nations had stressed the dramatic consequences of internal armed conflicts from the standpoint of human rights, since they posed a grave threat to the rules of international humanitarian law. Accordingly, the Nordic countries welcomed the fact that, in December 1995, the 26th International Conference of the Red Cross and Red Crescent had adopted a resolution emphasizing the importance of respect for minimum humanitarian standards in all situations by all the parties, without discrimination. It was also encouraging to note that so many Governments and competent intergovernmental and non-governmental organizations had transmitted to the Secretary-General their comments on the Declaration of Minimum Humanitarian Standards that had been adopted at Turku (Finland) in 1990. The debate was far from closed and the Nordic countries therefore intended to submit a draft resolution calling for the holding of a workshop which would be attended by governmental and non-governmental experts from all regions in order to study the problem more thoroughly.

51. Mr. DRZEWICKI (Observer for Poland) said that the idea of a declaration of minimum humanitarian standards, to which the Commission had referred in its resolution 1995/29, had already been supported by the OSCE countries participating in the Budapest Summit in 1994. Poland therefore commended the initiative recently taken by Switzerland, within the framework of OSCE, to

convene a meeting of experts at Vienna on 13 and 14 February 1996 for a more thorough study of "minimum standards of humanity", that being the term proposed by the Swiss experts. In fact, international humanitarian law was applicable to situations of armed conflict, but not to situations of internal conflict. Moreover, most human rights instruments made explicit provision for derogations from some fundamental rights in time of public emergency threatening the life of the nation. Unfortunately, since the Second World War, states of emergency had often been proclaimed without justification. That, together with the fact that the principal instruments concerning human rights and humanitarian law had not been ratified by all States and that situations constituting neither peace nor armed conflict were multiplying, with all the abuses that they implied, clearly demonstrated the need for a declaration that would be applicable in all situations.

52. The Declaration did not set new standards; it merely reaffirmed the applicability of the existing standards in all situations and by all States or other bodies. That decentralization of responsibility for the observance of humanitarian rules assumed crucial importance when the authorities were no longer able to ensure that the rules were respected by their own agents. As the International Committee of the Red Cross had emphasized in its reply (E/CN.4/1996/80/Add.1), the Declaration sought to strengthen the protection of individuals in situations of violence not covered by international humanitarian law.

53. In conclusion, Poland was of the opinion that the Commission should convene a workshop of governmental and non-governmental experts to help the Secretary-General to submit, at the next session, an analytical report on the question of the applicability of minimum humanitarian standards in all situations in order to avoid the abuses that were committed under cover of the principle of non-interference in the internal affairs of States.

54. Mr. VIGNY (Observer for Switzerland) said that his country attached great importance to the question of minimum standards of humanity. In fact, although the human person was protected in peacetime and during periods of armed conflict by numerous instruments and by customary international law, that protection seemed insufficient in some situations that were halfway between peace and armed conflict, such as periods of internal disturbances, tensions or latent conflicts. Sometimes a State was not a party to the relevant international instruments; sometimes it took advantage of the possibility of derogation from the guarantees provided for in human rights instruments even when the disturbances affecting it had not reached the level of gravity that justified the application of the common article 3 of the Geneva Conventions and, at other times, it even took advantage of that possibility by contesting the applicability of article 3. Again, an actor other than the Government sometimes declared that he was not bound by the obligations contracted by the State that he was combating. To remedy the abuses to which those situations gave rise, there was a need for a political declaration on minimum standards of humanity in order to supplement positive law, lay down specific rules of conduct that were easily applicable by any authority, person or any group of persons, and reaffirm the principles contained in the relevant instruments. The standards envisaged should not be subject to derogation and should be applicable in all circumstances and at all times.

55. The 53 Member States of OSCE which had met at Budapest in December 1994 had stressed the importance of such a declaration and, in its capacity as President of OSCE, Switzerland had convened at Vienna, on 13 and 14 February 1996, an informal meeting which had focused on two topics: first, the political and juridical need for a declaration and its relationship with other standards, and second, the content and addressees of such a declaration. The meeting had heard statements by Mr. Asbjørn Eide, a member of the Sub-Commission, and Mr. Theodore Meron, an eminent international jurist.

56. As a co-sponsor of Commission resolution 1995/29, Switzerland supported the idea proposed by Norway, on behalf of the Nordic countries, of a workshop designed to make the international community more aware of the extremely serious problems encountered in that field.

57. Mr. BONARD (International Committee of the Red Cross) said that, for a long time, ICRC had been seeking new approaches to promote greater respect for human values in situations involving internal disturbances or tensions that were not covered by international humanitarian law. Unfortunately, ICRC delegates in the field were often confronted with the forms of overt violence that characterized such situations: detention, disappearances, ill-treatment, torture, the taking of hostages, and so on. Hence, ICRC welcomed the proposed convening of a workshop on the necessary strengthening of the protection of individuals, while emphasizing that the primary aim should be to ensure respect for the existing rules. ICRC would contribute to that initiative as far as possible.

58. Ms. SPALDING (African Commission of Health and Human Rights Promoters (CAPSDH)) paid tribute to the Sub-Commission's valuable contribution to the cause of human rights, which the Secretary-General of the United Nations had emphasized while opening the present session. Of all the resolutions and decisions the Sub-Commission had adopted in the previous year, resolution 1995/17 on human rights and disability had been of the greatest interest to CAPSDH, whose principal task consisted in helping the victims of traumas or violence. Its strategy was to treat the persons concerned in their social, cultural and political environment in order to maximize the results obtained. In Ghana, CAPSDH was attending to the medical and psychological needs of patients. Victims of the violence in Sierra Leone were being treated in Guinea. There were also programmes for the victims of the clashes in Rwanda, and a psychological assistance programme in Uganda. In Eritrea, which had been independent since 1993, assistance was needed by a large number of widows, orphans and victims of various acts of violence, particularly the 40,000 disabled civilians and the 15,000 disabled veterans, one third of whom were women. The authorities were collaborating in those rehabilitation and reintegration programmes. In Guinea, the practice of torture had left thousands of victims in need of assistance. In view of the grave consequences of such acts, which violated the physical and psychological integrity of individuals and flouted the universal rights of peoples, CAPSDH appealed to the international community to take action and provide the necessary resources.

59. Mrs. SCHREIBER (International Movement against All Forms of Discrimination and Racism) said that the annual session of the Sub-Commission was a valuable contribution to the work of the Commission on Human Rights, as

it was the principal forum in which the weak, the poor, the excluded and all those who were being discriminated against could make their voices heard.

60. Her organization was particularly concerned at the plight of the millions of women and young girls throughout the world who were the victims of practices similar to slavery, such as the traffic in labour and prostitution, particularly in regions faced with serious economic difficulties. Even children were not spared. Last year, during the NGO forum held on the occasion of the World Conference on Women, the International Movement against All Forms of Discrimination and Racism had organized a workshop on the traffic in women in Asia. The Secretary-General's report to the General Assembly on that subject (A/50/369), which outlined all the measures taken by bodies defending human rights, was largely complete and particularly well-documented. However, it might be wondered whether positive results could be obtained in the absence of a more effective mechanism to monitor the application of the Convention on the Elimination of All Forms of Discrimination against Women.

61. Of the many violations of fundamental rights to which women fell victim, one of the most horrifying was undoubtedly the sexual slavery imposed on large numbers of women in wartime. The International Movement against All Forms of Discrimination and Racism fully supported the conclusions of the Special Rapporteur on violence against women, particularly those concerning Japan's responsibility for acts committed during the Second World War.

62. Lastly, she referred to the problem of indigenous peoples whose traditions, cultural heritage and even lives were threatened by aggressive policies of economic expansion. The industrial projects that might prejudice the rights and living conditions of those populations should be undertaken with every possible precaution and should show due regard for the human factor.

63. Ms. FALLON (Franciscans International) supported the Sub-Commission's working paper on systematic rape, sexual slavery and slavery-like practices during periods of armed conflict and hoped that the Commission on Human Rights would endorse the Sub-Commission's decision to appoint Mrs. Linda Chavez as Special Rapporteur on that question.

64. In that field, Japan's practices during the Second World War had rightly been condemned and she hoped that the victims would soon be awarded appropriate reparation. However, those events of long ago should not overshadow the violations of fundamental rights to which women were still being subjected in armed conflicts.

65. The Commission should urgently adopt a resolution to ensure the future protection of all women in wartime and to offer the victims the reparation to which they were entitled.

66. Mr. PUNJABI (Himalayan Research and Cultural Foundation), commenting on two of the issues raised in the Sub-Commission's report (E/CN.4/1996/2-E/CN.4/Sub.2/1995/51), said that, in regard to protection of the heritage of indigenous peoples, the greatest danger threatening the cultural heritage of those peoples was the policy pursued by some States, which were attempting to impose, in their territory, a socio-political uniformity based on religion.

Such a situation was clearly portrayed in the report on the situation in Pakistan, which had been presented by Mr. Amor, the Special Rapporteur, in accordance with Commission on Human Rights resolution 1995/23.

67. With regard to contemporary forms of slavery, particularly systematic rape and sexual slavery during periods of armed conflict, it might have been better to place greater emphasis, as had been done by Amnesty International in its report for 1995 on the situation of women in Afghanistan, on the danger arising in that regard from the increasing participation by private militias and mercenaries in those conflicts.

68. The Himalayan Research and Cultural Foundation hoped that the Commission would give due consideration to those two aspects when formulating a long-term strategy to safeguard the fundamental rights of indigenous peoples and women.

69. Mr. RYONG (Liberation) said he supported the Sub-Commission's working paper on sexual slavery and slavery-like practices in wartime, particularly in so far as it concerned the crimes committed by Japan during the Second World War. In spite of the efforts made by the Japanese Government to hide the material and documentary evidence relating to those crimes, they had been recognized by the international community, and tribunals constituted by the allied forces had found 30 named Japanese war criminals guilty of forcing persons to prostitute themselves. The Japanese Government was still claiming that, by virtue of its colonial rule over Korea, it was perfectly entitled to recruit forced labour and sexual slaves in that country. However, paradoxically, it had also established a private fund to compensate the victims in an attempt to evade its responsibility. That attitude was an affront to peace and human rights and detracted from the dignity and honour of the victims. The Liberation movement called upon the Commission to ensure respect for the provisions of the Sub-Commission's resolution concerning systematic rape and sexual slavery during periods of armed conflict and to continue its investigation of the subject.

70. Ms. DEGENER (Disabled Peoples International) said that her organization welcomed Sub-Commission resolution 1995/17, on human rights and disability, as well as the part of resolution 1995/16 concerning the traffic in organs, to which disabled children and patients suffering from mental illness were most likely to fall victim. However, it was regrettable that the problems of disabled persons had not been taken into consideration in several other fields studied by the Sub-Commission or the Commission.

71. For example, several studies showed that disabled persons were more likely than others to be subjected to sexual violence and racial discrimination. With regard to arbitrary detention, the forcible placement of disabled persons in institutions due to the lack of the resources needed to provide them with home care was tantamount to incarcerating those persons, even though they had not been found guilty of any crime. Some current bills of law which sought to deny disabled persons the right to marry or procreate, on purely economic grounds, could be likened to euthanasia and were ominously reminiscent of the Nazi era.

72. Disabled Peoples International urged the Commission to give due attention to those violations of human rights and to ensure that the recommendations and

plans of action adopted at the World Conference on Human Rights and the World Conference on Women were put into effect. As the Sub-Commission had acknowledged in resolution 1995/17, the Standard Rules on the Equalization of Opportunities for Persons with Disabilities were not binding on States. Moreover, the monitoring mechanism was being hampered by the lack of financial resources and had therefore been attached to the Commission on Social Development, which tended to perpetuate the misconception that disability was more a problem of social development than a problem of human rights.

73. At all events, the Standard Rules on the Equalization of Opportunities for Persons with Disabilities could never be a substitute for a real international convention prohibiting all discrimination based on disability and establishing clearly-defined rules concerning violations of human rights and other contemporary threats to the lives of disabled persons. Disabled Peoples International therefore urged the Commission to request the Sub-Commission to draft up such a convention.

74. Ms. SILWAL (World Peace Council) said that, of the inalienable rights of the human person, the right to freedom from want, which was a corollary of the right to development, was unfortunately being pushed into the background.

75. Moreover, there was a tendency to forget that the very essence of democracy was the possibility for all citizens, irrespective of their political beliefs or their race, religion or gender, to enjoy equal opportunities. Pakistan, which regarded itself as a democracy, had adopted a legal and constitutional structure which, in effect, codified and institutionalized the discrimination that was being practised against that country's Christian, Hindu, Ahmadi, Zikri and Shi'ite minorities. No member of those religious minorities had the right to be elected to the post of head of State. The Sindhi community was among those most seriously affected by persecution on the part of the Pakistani Government. Several NGOs had sounded the alarm and declared that the Sindhi civilization was threatened with extinction by the terrorism, arms smuggling, drug trafficking and systematic repression to which it was being subjected.

76. The World Peace Council appealed to the international community and to all Governments to immediately condemn the legal and constitutional structures that permitted and encouraged discrimination based on religion, race or creed.

77. Mrs. PAK Song Ok (International Federation of Women in Legal Careers) said she attached great importance to the resolutions adopted at the forty-seventh session of the Sub-Commission on sexual slavery during periods of armed conflict and on forced labour as a contemporary form of slavery.

78. Those resolutions had a bearing on the crimes committed by Japan during the Second World War and during its 40-year colonial rule in Korea. In addition to imposing forced labour on 6 million young Koreans, it had also forced 200,000 women to serve as sexual slaves for the Japanese army. Japan was currently attempting to exonerate itself from those crimes by expressing vague "apologies" and establishing a private fund to compensate the victims.

79. The international community, including the thousands of peace-loving Japanese who respected human rights, could not be satisfied with that

solution. Japan must officially make amends, in accordance with the rules of international law and United Nations resolutions, for the crimes it had committed. In other words, the compensation that it was offering to the victims should be fair compensation awarded by the State and not merely private compensation. The International Federation of Women in Legal Careers called upon the Commission to endorse the resolutions adopted at the forty-seventh session of the Sub-Commission and to take effective measures to compel Japan to implement them unconditionally.

80. Mr. EYA-NCHAMA (African Association of Education for Development) submitted a declaration on behalf of several NGO signatories which were concerned at the proposal to the effect that the Sub-Commission should in future hold biennial instead of annual sessions. Such a decision would be a severe blow to the cause of human rights.

81. The Sub-Commission's task was primarily to act as a think-tank consisting of independent experts that would help to develop a partnership between the Commission on Human Rights, the Secretariat and the NGO community. Its working methods had recently been rationalized and improved to that end. It was expected to play an increasingly important coordinating role not only in regard to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities but also in regard to the instruments that were currently being elaborated in that field by the Council of Europe and the Organization for Security and Cooperation in Europe. Accordingly, the NGO signatories urged the Commission on Human Rights to reaffirm the importance of the Sub-Commission's role as an integral part of the United Nations programme in the field of human rights and to recommend to the Economic and Social Council that the Sub-Commission continue, during its regular annual sessions, to fulfil its indispensable function of promoting and protecting human rights.

82. Mr. MAJID TRAMBOO (International Human Rights Association of American Minorities) welcomed the Sub-Commission's report on its forty-seventh session, particularly draft decision 3 to appoint a Special Rapporteur on the recognition of gross and large-scale violations of human rights perpetrated on the orders of Governments or sanctioned by them as an international crime. Such large-scale violations were being committed in Kashmir by the Indian Government in violation of article 2 of the Convention against Torture. Detainees were being interrogated in centres where they were subjected to cruel treatment that had been documented principally by Amnesty International and they were left without care to the extent that, in some cases, amputations became necessary. That had happened, among others, to two young persons, Nazir Ahmad Sheikh and Bashir Ahmad Mir, who had been arrested and tortured by the Indian army in the early part of 1995.

83. In Kashmir, repression was synonymous with arrests, torture and disappearances. The bodies of missing persons were often found in the street a few days later. The brutal and ruthless offensive that New Delhi was conducting against the Kashmiris, simply because the Kashmiris were claiming the right to self-determination, exceeded all the limits of barbarity. The International Human Rights Association of American Minorities therefore urged the Commission to consider the possibility of establishing a body to investigate all cases of torture that were reported in Jammu and Kashmir.

84. Mrs. Chung-Ok YUN (World Council of Churches, Commission of the Churches on International Affairs) drew attention to a matter of grave concern to her organization, namely the question of systematic rape and sexual slavery during periods of armed conflict, which formed the subject of a working paper submitted to the Sub-Commission by Mrs. Linda Chavez (E/CN.4/Sub.2/1995/38) and of a Sub-Commission resolution. Mrs. Chavez had given an exact description of the sexual slavery practised by Japan during the Second World War. Having been born in Korea in 1925 and, consequently, having experienced the Japanese invasion, she knew the implications of that sexual slavery, which she had fortunately escaped. Young girls and young women had been recruited by force or deception and treated as "military supplies" by the Japanese. Although many had died, about 160 of them were still alive. What they were today demanding from the Japanese Government was tangible reparation and not merely official apologies.

85. The World Council of Churches urged the Commission to adopt the Sub-Commission's draft decision 1 and endorse the appointment of Mrs. Linda Chavez as Special Rapporteur with the task of undertaking a study on the situation in regard to systematic rape during periods of armed conflict not only in the past but also at the present time.

86. The CHAIRMAN said that consideration of agenda item 15 had been concluded.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES;

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(agenda item 8) (E/CN.4/1996/5, 28, 29 and Add.1, 2 and 3, 30, 31 and Add.1, 32 and Add.1, 33 and Add.1, 34, 35, Add.1 and Corr.1 and Add.2, 36, 37, 38, 39 and Add.1 and 2, 40 and Add.1, 41, 121, 122, 123, 124, 133 and 143; E/CN.4/1996/NGO/10, NGO/24, NGO/25, NGO/26, NGO/36, NGO/46, NGO/55 and NGO/61; E/CN.4/Sub.2/1995/20 and Corr.1 and Add.1 and 30 and Add.1; A/50/512)

87. Mr. VARGAS PIZARRO (Costa Rica) (Chairman/Rapporteur of the Working Group on the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) presented the Working Group's report and pointed out that the purpose of the draft optional protocol, which was based on a text submitted by the Costa Rican Government, was to institute a system of regular visits to persons deprived of liberty in order to protect them from torture and other ill-treatment. Its fundamental

principle was confidentiality in relations with the State party with a view to establishing dialogue between the latter and the international monitoring body.

88. Since its establishment in 1992 under the terms of Commission on Human Rights resolution 43/92, the Working Group had been actively engaged in the preparation of the draft. At the fourth session, held at Geneva from 10 October to 10 November 1995, it had concluded the first reading of the text; articles 14 to 21, as well as the text resulting from the amalgamation of articles 10 and 11, had been considered by an informal drafting group and adopted at a plenary meeting. Thirty States members of the Commission, 18 non-member States, observer countries such as Switzerland and representatives of various NGOs, including the Association for the Prevention of Torture, Amnesty International and the International Commission of Jurists, as well as experts such as Mr. Bent Sorensen, representing the Committee against Torture, had participated in the work.

89. The members of the Working Group felt that a second reading of the text was necessary with a view to final adoption within a reasonable period of time. Accordingly, he requested the Commission to approve the report of the Working Group and to renew the Group's mandate in the same way as in previous years. The Group had embarked on its work at a historic moment which coincided with the proclamation of the Decade of International Law by the General Assembly of the United Nations, and it was to be hoped that the end of the Decade would be marked by the adoption of a new and effective instrument of international law to combat torture.

90. Mr. BUSDACHIN (Transnational Radical Party), referring to the report (E/CN.4/1996/35) submitted by Mr. Nigel S. Rodley, the Special Rapporteur on torture, expressed his organization's deep concern at the ongoing practice of torture in a number of countries, particularly in Kosovo and China. In Kosovo, physical torture was used systematically against all groups, including women, children and elderly persons. According to an organization for the defence of human rights in Prishtina, more than 10,000 Albanians had been subjected to torture or other cruel treatment. The policy pursued by the Yugoslav authorities in violation of their own Constitution and the Convention against Torture could be likened to a new form of ethnic cleansing.

91. With regard to China, the situation was particularly serious in Tibet and, in July 1995, the Special Rapporteur had drawn the attention of the Chinese Government to the acts of torture to which persons arrested for political reasons were being subjected. For its part, Amnesty International had reported an intensification of repression in rural areas of Tibet, as well as numerous raids on monasteries. The enforced disappearance of the new Panchen Lama, a six-year old child, was a perfect illustration of the human rights situation in China.

92. The Transnational Radical Party urged the Commission to take into consideration, in its thematic resolutions, the human rights situation in those countries, particularly in China, and to appoint a special rapporteur to investigate the matter.

93. Lastly, he drew the Commission's attention to the increasing number of death sentences in many countries and to some methods of execution that were of a particularly cruel nature. Although China was the country in which the largest number of executions took place, it should not be forgotten that the number had increased dramatically in recent years in the United States. It was particularly disturbing in as much as thousands of persons who had been sentenced to death sometimes waited more than 10 years before being executed. For that reason, the Transnational Radical Party, in conjunction with the International Campaign for the Abolition of the Death Penalty (Hands Off Cain) called upon the Commission to consider the death penalty a cruel and inhuman punishment. The Member States, and particularly the members of the European Union, should be requested to submit a draft resolution on capital punishment at the next session of the General Assembly.

94. Ms. BRIE (France-Libertés: Fondation Danielle Mitterrand) drew the Commission's attention to the human rights violations that were committed when states of emergency were in force. As the Special Rapporteur on the independence of judges and lawyers had indicated in his report (E/CN.4/1995/39), decrees proclaiming a state of emergency often entailed the restriction or suspension of judicial controls. That was precisely the case in Bahrain, where a legislative decree on State security authorized the handing down of judgements without any guarantee of a defence. According to the lists in the possession of France-Libertés, 1,106 persons were currently detained for crimes of opinion and many of them were minors from 10 to 18 years of age. More than anyone else, those young persons were exposed to physical and sexual abuse. She also referred to the case of several young women whose places of detention were being kept secret and some of them had been tortured, in violation of the State's Constitution, during previous arrests. France-Libertés was also concerned about the fate of three well-known persons who had been transferred to a military hospital. She called on the Commission to request the Special Rapporteur on torture to undertake an investigative field mission there as soon as possible and to give particular attention to the situation of women and minors detained in Bahraini prisons.

95. France-Libertés was also concerned at the information that it had received concerning executions without trial, or after unfair trials, in the Islamic Republic of Iran. For example, on 1 March 1996, two persons had been executed without trial after being under detention and ill-treated for a whole year. France-Libertés also possessed a partial list of 237 Kurdish political prisoners, 164 of whom had still not been tried, although some had been held since 1980. She took note of the visit by Mr. Maurice Dandy Copithorne, the new Special Rapporteur on Iran, and that by the Special Rapporteur on religious intolerance, who had been able to interview the three women accused of murdering Iranian Christian priests. The confessions by the three women raised doubts about the persons who had actually ordered those murders. France-Libertés requested the Commission to urge the Iranian Government to take the measures provided for in articles 2, 6, 9 and 14 of the International Covenant on Civil and Political Rights and to sign and ratify the Convention against Torture.

96. The resurgence of repression in Tunisia against members or supporters of political parties was also disturbing. She referred, in particular, to the

cases of Hamma Hammami, the leader of the Tunisian Communist Workers' Party, Mustapha Ben Djaffar, the former Vice-President of the Tunisian Human Rights League, Moncef Marzouki and other persons, who had all been imprisoned, placed under surveillance and even tortured for ideological reasons. Alya Chammari, the wife of a parliamentary representative of the legal opposition, had been harassed by the police and Mr. Najib Hosni, a lawyer specializing in the defence of human rights, had been arrested on 15 June 1994 and tortured. The France-Libertés Foundation was concerned at the fact that the Tunisian Government was using the struggle against religious fundamentalism as a pretext to muzzle any form of opposition. It therefore called on the Commission to make every effort to remedy the situation.

97. Mr. SAFA (Arab Organization for Human Rights) said that he had come from southern Lebanon for the specific purpose of acquainting the Commission with the situation of the Lebanese detainees in Israeli prisons. In 1995, as a result of international pressure, the International Committee of the Red Cross had been able to visit those prisons and report to the international community on the ill-treatment that was being inflicted on the detainees. However, that had not led to any improvement in the situation: mothers no longer recognized their sons due to the extent to which they had become emaciated; and sons, who had lost their memory as a result of blows or depression, no longer recognized their mothers. The United Nations doctor who had visited the detainees had testified to the fact that they had been subjected to electric shocks and tortured. However, the Israeli authorities were not providing care for the detainees who had been ill-treated or simply fallen ill, in total disregard of article 12 of the Geneva Conventions and all the provisions of the Third Convention relative to the Treatment of Prisoners of War.

98. In fact, the Israeli authorities regarded those detainees as hostages who would languish in prison without being brought to trial. The Commission should once again alert international public opinion and form an official visiting group that would be in a position to demand vociferously the closure of those prisons, the release of the detainees and the handing over to ICRC of the remains of the detainees who had died.

99. Mr. WAREHAM (International Association against Torture (IAAT) referred to the question of the human rights of all persons subjected to any form of detention or imprisonment, with particular reference to the Republic of Korea, Chile and the United States of America.

100. In the Republic of Korea, the Government seemed to be on the right track, as indicated by Mr. Hussain, the Special Rapporteur, in his report (E/CN.4/1996/39/Add.1), although the progress noted in regard to protection of human rights remained inadequate. The Government should repeal the National Security Act, under which persons could still be imprisoned merely for exercising their right to freedom of thought and expression. The Government should also authorize repatriation to the Democratic People's Republic of Korea of the former prisoners of war who had now been incarcerated for more than 30 years. Moreover, the violent manner with which the authorities of the Republic of Korea had suppressed recent protest demonstrations was alarming.

101. In Chile, after six years of democratic government, there were still 122 political prisoners (101 men and 21 women), the vast majority of them tried by military courts. Hence, as had been the case under the dictatorship, the liberty and even the lives of many Chileans were still in the hands of the armed forces. The civilian authorities bore prime responsibility for allowing those political prisoners to be subjected to deplorable conditions of detention without any legal defence. The Commission should remind the Chilean Government that it was under an obligation strictly to respect the rights of political detainees.

102. In the United States of America, the actual situation belied that country's claim to be a model of democracy. The United States was becoming a police State in which examples of police violence and corruption were proliferating. Moreover, although the United States had ratified the International Covenant on Civil and Political Rights, the Administration, at both the federal and state levels, seemed to be increasingly in favour of enforcing the death penalty and did not hesitate to contest the independence of judicial bodies when the latter attempted to cure that trend. Furthermore, recent legislation had almost totally eliminated any discretion which judges had to pass sentence on the basis of a number of factors relevant to the case in question. It was not surprising, therefore, that more than 1,100,000 persons were currently detained in the federal and State prisons, in addition to almost 500,000 others who were held in local jails. That overcrowding would inevitably lead to riots in those penal institutions. The situation was partly attributable to the way in which the United States authorities treated their unacknowledged political prisoners and prisoners of war. For example, their refusal to abolish the death penalty had made Mumia Abu Jamal the world's most famous political prisoner at the present time: although his execution had been postponed, his sentence had still not been commuted.

103. In the view of IAAT, the Commission, by turning a blind eye to the human rights violations which were thus being committed by some Member States, was undermining the progress that it had made in that field for the benefit of all.

104. Mr. CHERIF (International Federation of Human Rights (FIDH)) referred to the consequences of the persistence, in some countries, of states of emergency and of the phenomenon of impunity.

105. In Egypt, human rights and fundamental freedoms remained a dead letter due to the state of emergency that had been in force for 15 years and under which almost 17,000 persons were being detained arbitrarily. In the prisons and police stations, torture was practised as a matter of policy and, in 1995, at least 20 detainees had died under torture or for lack of medical care. In Syria, the state of emergency had been in force since 1963 and had been reinforced by the omnipresence of extrajudicial procedures and the predominance of emergency legislation. Thousands of prisoners of conscience had been judged by the State Security Court and 2,700 prisoners of conscience were still detained in Syrian jails. For almost 5 years, 10 human rights militants had been detained simply for claiming the right to form an organization to defend human rights. In Lebanon, freedom of opinion and expression was being systematically suppressed by the Government, ostensibly in order to "safeguard public order". The mission to investigate the fate of

missing persons that had recently been undertaken by FIDH, acting in conjunction with other NGOs, had not even been received by the authorities. In Tunisia, FIDH had recorded systematic violations of the right to a fair trial, the right to physical integrity and freedom of opinion, expression and movement and was concerned at the impunity enjoyed by the perpetrators of those violations.

106. In Peru, the Amnesty Act and its implementing regulations had instituted impunity as an official State policy. The practice of torture and arbitrary detention was continuing, as were enforced disappearances, extrajudicial executions and death threats against all those who opposed that legislation, particularly defenders of human rights, including the leaders of FIDH. In Sri Lanka, emergency legislation likewise remained in force. Under the so-called "Prevention of Terrorism Act", the authorities enjoyed virtual discretionary power to arrest and hold in custody anyone who could be reasonably suspected of illegal activities. Some emergency regulations were in flagrant contradiction with the International Covenant on Civil and Political Rights, which Sri Lanka had ratified.

107. In Viet Nam, FIDH had noted that impunity prevailed for perpetrators of human rights violations. In 1995, the number of arbitrary arrests had multiplied at the expense of dissidents of all types and the conditions under which prisoners of conscience were held were still incompatible with international standards. Finally, with regard to Northern Ireland, FIDH regretted that the Government of the United Kingdom had not responded to the appeals by the Human Rights Committee and the Committee against Torture, which had called on it to repeal the emergency legislation. That same Government had remained indifferent to the complaints brought before it, particularly in regard to members of the security forces who were involved in schemes to intimidate defence lawyers.

108. Ms. GRAF (International League for the Rights and Liberation of Peoples) pointed out that the States Members of the United Nations which had met at Vienna during the World Conference on Human Rights had called for abrogation of the legislation under which the perpetrators of human rights violations enjoyed impunity. That had not prevented Peru from adopting the Amnesty Act of 16 June 1995 for military personnel, policemen and civilians who had participated in such violations from 1980 to 1995, nor had it prevented Peru from supplementing the Act with implementing regulations that precluded any attempt to circumvent it in order to restore law and justice. The Peruvian Government had thereby made a mockery of resolution 1995/38 in which the Commission placed States under an obligation to "conduct prompt and impartial inquiries in all circumstances" and to prosecute the persons responsible for enforced disappearances.

109. Likewise, in Argentina, under two Amnesty Acts adopted in 1986 and 1987 the persons responsible for 30,000 disappearances and thousands of murders had been exonerated from their crimes. A criminal action that had been brought in Italy in 1983 against the Argentine military personnel responsible for the disappearance or summary execution of dozens of Italian citizens during the dictatorship was consequently being obstructed by the wall of impunity that had been erected by the Argentine authorities. The International League for the Rights and Liberation of Peoples called upon the Commission to strongly

urge the Argentine Government to collaborate with the Italian judicial authorities on that matter.

110. Mr. BHAN (International Institute for Peace) noted with concern that the practice of the wrongful detention of innocent persons was becoming more widespread and was even being aggravated as a result of the hostage-taking to which terrorist groups were resorting more frequently. For example, in 1995, the Sub-Commission on Prevention of Discrimination and Protection of Minorities had condemned the murder, in Jammu and Kashmir, of a Norwegian hostage by the Al-Faran group, as well as the death threats that the same group had made against four other hostages. Those four had still not been released. It had become obvious that the Al-Faran group, which was calling for the release of 21 of its militants who had been arrested by the Indian security forces, was receiving aid and support from Pakistan. The Commission should not hesitate to recommend that the Security Council and General Assembly of the United Nations sanction the countries that were serving as bases for terrorist and mercenary organizations nich were unashamedly proclaiming in the media of the host country that they were engaging, with impunity, in violent action against third countries.

111. Ms. KIM (Pax Romana), speaking on behalf of Pax Romana and 14 other NGOs seeking to protect human rights in the region of Asia and the Pacific, said that Asia no longer guaranteed impunity for the perpetrators of human rights violations since two former Presidents of the Republic of Korea had been arrested and judged for corruption and for participating in the massacre at Kwangju in May 1980. As in the case of the Philippines after the downfall of Marcos, the Republic of Korea had thus taken steps to punish the persons responsible for crimes against humanity. Accordingly, there was cause to hope that the persons responsible for the Tienammen massacre in China in 1989, the Santa Cruz massacre in East Timor in 1991, the bloody repressions in Burma since 1988 and the gross violations of human rights in Thailand, Sri Lanka and Russia would eventually be brought to justice.

112. In Asia, impunity had hitherto been closely linked to a certain national security ideology for which the big Powers - the United States in the Republic of Korea, Indonesia in East Timor and China in Tibet, for example - had not hesitated to sacrifice many human lives. It was to be hoped that the abusive practice of impunity would henceforth give way to democracy and respect for human rights. The Asian Governments would do well to endow themselves with a mechanism which would enable them to establish responsibilities and call to account and bring to justice the perpetrators of human rights violations and crimes that had been committed in the past.

113. Ms. LEEDOM-ACKERMAN (International Pen) said that, throughout the world, national security and anti-terrorist legislation was still being used against writers and journalists who were merely exercising their right to freedom of expression as guaranteed under article 19 of the Universal Declaration of Human Rights. Frequently, it was the lack of precision in the interpretation of that type of legislation that enabled it to be used to criminalize expressions of opinion, as the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression had rightly pointed out in his report (E/CN.4/1996/39/Add.1) on the subject of the National Security Law that was still in force in the Republic of Korea. It

was regrettable that the Special Rapporteur had been obliged to postpone his visit to Turkey, where many writers and journalists were being held in detention under article 8 of the Anti-Terror Law because they had referred to the Kurdish question in their articles and because the Turkish Government felt entitled, by virtue of the limitations that could be placed on article 19 of the International Covenant on Civil and Political Rights, to detain all those who threatened the "indivisible unity of the State". The Special Rapporteur should also seek permission to visit Syria, where eight writers and journalists had been sentenced to terms of up to 15 years' imprisonment, mostly by the Supreme State Security Court, which was not independent. The desire of States to protect their national security and combat terrorism should not go to the extent of denying their citizens the right to freedom of expression.

The meeting rose at 8.30 p.m.